



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCIO

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Mark Stebbins, Bureau of Land & Water Quality, Augusta
RE: Administrative Consent Agreement with Maine Central Railroad Company
DATE: June 15, 2006

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Statute and Rule Reference The Performance Standards for Quarries, 38 M.R.S.A. § 490-Z, establishes the operating requirements for quarries. Section 490-Z(8) states, in pertinent part, that a quarry must drain internally unless a variance is requested and approved by the Department.

The Protection and Improvement of Waters Act, 38 M.R.S.A. Section 413, states, in pertinent part, that no person shall directly or indirectly cause soil material to be discharged into waters of the State without a permit therefor from the Department.

Location: Embden Maine

Description: On October 27, 2005, Department staff conducted an inspection of the property and found that that runoff from an approved quarry flowed into a shallow excavated depression surrounded by a berm. Sediment had discharged through a culvert in the berm, impacting an adjacent wetland and the Kennebec River. At staff's request, Maine Central Railroad Company employed additional erosion control measures to prevent sediment from discharging offsite. Under the Performance Standards for Quarries, 38 M.R.S.A. § 490-Z(8), a quarry may not drain externally unless a variance is obtained from the Department. A review of Department records reveals that the site does not have a variance to operate a quarry that drains externally.

The inspection also revealed that prior to blasting, Maine Central Railroad Company did not conduct a pre-blast survey as required by the performance standards.

Environmental Issues: Quarries have the potential to create erosion and sedimentation problems from uncontrolled runoff, groundwater pollution from fuel spills and equipment leaks, air pollution from uncontrolled dust sources, noise pollution, and safety concerns from steep unstable slopes. These concerns are addressed by operating a pit in compliance with the Department's Performance Standards for Quarries.

Department Recommendation: The Department recommends acceptance of this Agreement, which stipulates that Maine Central Railroad Company submit an after-the-fact variance application and pay a monetary penalty of \$ 3,422 which has been paid. The Agreement also requires Maine Central Railroad Company to comply with all terms and conditions if a variance is approved or, if denied, submit a reclamation plan to restore all disturbed areas of the quarry.

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

BOARD ORDER
IN THE MATTER OF

MAINE CENTRAL RAILROAD COMPANY
Iron Horse Park
North Billerica, MA

) ADMINISTRATIVE CONSENT
) AGREEMENT AND
) ENFORCEMENT ORDER
) Performance Standards for Quarries,
) 38 M R S A § 413)

This Agreement by and among Maine Central Railroad Company, the Maine Board of Environmental Protection (the Board) and the State of Maine Attorney General is entered into pursuant to 38 M R S A § 347-A and in accordance with the Department of Environmental Protection (Department) Consent Agreement Policy, as amended

The parties agree as follows

- 1 Maine Central Railroad Company owns a parcel of land adjacent to State Route 16 in Embden, Maine as described and recorded in Book # 391 on Page # 190, of the Somerset County Registry of Deeds
- 2 Maine Central Railroad Company is a Maine corporation authorized to conduct business in Maine. David A. Fink is the Executive Vice President of Maine Central Railroad Company
- 3 On February 22, 2005, Maine Central Railroad Company submitted a "Notice of Intent to Comply" pursuant to Performance Standards for Quarries, 38 M R S A § 490-Y, to mine at the location described in Paragraph 1 of this Agreement. On February 28, 2005, the Department approved the Notice of Intent to Comply
- 4 The property described in Paragraph 1 of this Agreement contains a portion of a river as defined in the Natural Resources Protection Act, 38 M R S A § 480-B(9) and waters of the State of Maine as defined by the Protection and Improvement of Waters Act, 38 M R S A § 361-A(7)
- 5 On October 27, 2005, Department staff conducted an inspection of the property described in Paragraph 1 of this Agreement and found that that runoff from the quarry flows into a shallow excavated depression surrounded by a berm. Sediment had discharged through a culvert in the berm, impacting an adjacent wetland and the Kennebec River. While onsite, Department staff requested that certain measures be implemented to correct the deficiency. Maine Central Railroad Company employed additional erosion control measures to prevent sediment from discharging offsite. Under the Performance Standards for Quarries, 38 M R S A § 490-Z(8), a quarry may not drain externally unless a variance is obtained from the Department. A review of Department records reveals that the site does not have a variance to operate a quarry that drains externally.

The inspection also revealed that Maine Central Railroad Company did not conduct a pre-blast survey as required by the performance standards. Under the performance standards, a pre-blast survey is required prior to initiating blasting activity.

- 6 The activities described in Paragraph 5 of this Agreement constitute the following violations:

- A By operating a quarry that drains externally without first obtaining a permit from the Department, Maine Central Railroad Company violated the Performance Standards for Excavations, 38 M R S A § 490-Z(8).

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- B By failing to conduct a pre-blast survey prior to initiating blasting activity, Maine Central Railroad Company violated the Performance Standards for Quarries, 38 M R S A § 490-Z(14) (F)
 - C By discharging pollutants, namely soil material, into waters of the State of Maine without a license from the Department, Maine Central Railroad violated the Protection and Improvement of Waters Act, 38 M R S A § 413
- 7 On January 9, 2006, the Department issued a Stop Work Order pursuant to the Performance Standards for Quarries, 38 M R S A § 490-BB, and a Notice of Violation to Maine Central Railroad Company for the violations listed in Paragraphs 5 and 6 of this Agreement in accordance with 38 M R S A § 347-A(1)(B)
- 8 On January 23, 2006, Maine Central Railroad Company notified the Department by letter that they intend to file a variance application to operate a quarry that drains externally
- 9 The Board has regulatory authority over the activities described herein
- 10 This Agreement shall become effective only if it is accepted by the Board and approved by the Attorney General
- 11 To resolve the violations referred to in Paragraphs 5 of this Agreement, Maine Central Railroad Company agrees to
- A By May 1, 2006, submit an after-the-fact variance application acceptable for processing to operate a quarry that drains externally

If the after-the-fact application is approved, comply with all terms and conditions of the after-the-fact permit by October 15, 2006, or

If the after-the-fact application is denied, returned, or withdrawn, within 30 days of denial, return, or withdrawal, submit a reclamation plan to the Department to restore all disturbed areas of the quarry. The reclamation plan is subject to approval by the Department and must include a specific time schedule for the completion of all phases of reclamation. The plan must be implemented in accordance with the schedule contained therein, and
 - B Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for each violation of any provision of this Consent Agreement
 - C Pay to the Treasurer, State of Maine, upon signing this Agreement, a civil penalty in the sum of three thousand four hundred twenty two dollars (\$3,422.00)
- 12 The Board and the State of Maine Attorney General grant Maine Central Railroad Company a release of their causes of action against Maine Central Railroad Company for the specific violations listed in Paragraphs 5 and 6 of this Agreement on the express conditions that all

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actions listed in Paragraph 11 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective unless and until these conditions are satisfied.

O R D E R

Pursuant to 38 M R S A § 347-A and the Department Consent Agreement Policy, as amended, and based on the Agreement set forth above, the Board orders Maine Central Railroad Company to

- 1 By May 1, 2006, submit an after-the-fact variance application acceptable for processing to operate a quarry that drains externally

If the after-the-fact application is approved, comply with all terms and conditions of the after-the-fact permit by October 15, 2006, or

If the after-the-fact application is denied, returned, or withdrawn, within 30 days of denial, return, or withdrawal, submit a reclamation plan to the Department to restore all disturbed areas of the quarry. The reclamation plan is subject to approval by the Department and must include a specific time schedule for the completion of all phases of reclamation. The plan must be implemented in accordance with the schedule contained therein.

- 2 Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for each violation of any provision of this Consent Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

MAINE CENTRAL RAILROAD COMPANY

BY David A. Fink DATE 4/25/06
DAVID A. FINK, EXECUTIVE VICE PRESIDENT

BOARD OF ENVIRONMENTAL PROTECTION

BY _____ DATE _____
MATTHEW SCOTT, CHAIR

SEEN AND AGREED TO STATE OF MAINE

BY _____ DATE _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL